

BOARD OF APPEALS CASE NO. 4834

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BEFORE THE

APPLICANT: Stephen E. Quick

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ZONING HEARING EXAMINER

**REQUEST: Appeal of Administrative
Decision and Interpretation regarding
issuance of a building permit;
1504 Lake Vista Drive, Joppa**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 8/12/98 & 8/19/98

**HEARING DATE: October 19, 1998 and
March 15, 1999**

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Record: 8/14/98 & 8/21/98

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Stephen Quick, pursuant to Section 267-7(E) of the Harford County Zoning Code, appeals the decision of the Zoning Administrator wherein the Zoning Administrator approved the issuance of a building permit on a lot adjoining the property of the Applicant.

The subject parcel is located at 1504 Lake Vista Drive, Joppa, Maryland 21085 and is more particularly identified on Tax Map 61, Grid 1B, Parcel 7. The subject lot consists of 10 acres, is presently zoned AG and is entirely within the First Election District.

PROCEDURAL BACKGROUND

The Applicant filed an appeal from the decision of the Zoning Administrator regarding the issuance of Building Permit No. 97218B0220 for the construction of a dwelling house on Lot 2 of the Lakeside Vista Subdivision (hereinafter the "Wallace lot"), contending that the permit was illegally issued because the Wallace lot does not front on a road as required by the Code. Harford County Maryland filed a Motion to Dismiss contending that the issuance of a building permit is not an appealable decision of the Zoning Administrator. In a decision dated 12/22/98, the Hearing Examiner denied the County's Motion to Dismiss holding that the Code, pursuant to Section 267-8, requires the Zoning Administrator to issue a "zoning certificate" as part of the building permit process and was thus appealable pursuant to Section 267-7(E) of the Code.

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The Applicant also requested a ruling on the standing of Harford County to participate in the case. At the beginning of hearings on March 15, 1999 the Hearing Examiner ruled that Harford County was not a person aggrieved within the meaning of the Code and thus had no standing to participate as a party in the case. By stipulation of counsel the County Law department was permitted to act in the capacity of legal counsel to representatives of the Department of Planning and Zoning who appeared to testify in the case.

FACTS

The facts are relatively simple. The Wallace lot fronts on a “paper road” that is shown on the subdivision plats for the Lakeside Vista subdivision. That portion of the road that shows as fronting on the Wallace lot has never been developed and, indeed, has never been conveyed to the County for public road construction. The existing road bed ends in a T-turnaround and shares a common boundary with the Applicant’s property but not the Wallace lot. Initially, upon application for a building permit, the Wallaces were told by the Department of Planning and Zoning that their property did not have the required road frontage and that a quit claim deed would need to be signed by the Applicant herein which would convey the strip of land lying between the existing T-turnaround and the Wallace lot. The Applicant has not signed the quit-claim deed and takes the position that he is not required to do so.

The Wallaces, undeterred, negotiated with Carol Zuby, owner of Lot 77, which abuts the Wallace lot and the existing paved road, to obtain an easement for ingress and egress as well as utilities. The easement would run from the Wallace lot, across the Zuby property, to the existing paved roadway. Upon cross examination of Ms. Zuby and the introduction of photographic evidence it is clear that the area of the easement has not been paved and is presently in a forested state.

Mr. Anthony McClune testified that the easement satisfies the access requirement and that the recorded plat satisfies the road frontage requirements set forth in the Code. He acknowledged that the Applicant has not conveyed the remainder of the recorded road bed by deed to the County.

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Pursuant to Section 267-22 of the Harford County Code, “...Any building, structure or use fronting on a public or private road shall be located on a lot abutting the road for at least twenty-five feet, except as otherwise required by this Part I.”

Such provisions within a zoning code have been almost universally held to promote the health, safety and general welfare of the community and to ensure adequate street frontage to facilitate fire protection and other emergency services. Restivo v. Princeton Const. Co., 223 Md. 516, 525, 165 A.2d 766 (1960); Tobin v. Radnor TP. Bd. Of Com’rs, 597 A.2d 1258 (1991).

The question presented then is whether the Wallace lot meets the requirements of Section 267-22. The Hearing Examiner finds that it does not. The Harford County Code defines “road” as “ [A] right of way which has been improved and is intended for motor vehicle traffic and provided the principal means of access to property.” Further, the Code defines “Right of way” as “ [A] strip of land acquired by reservation, dedication, prescription or condemnation and intended to be occupied by a road, crosswalk, railroad, electric transmission lines, oil or gas pipeline, waterline, sanitary storm sewer and other similar uses.” In this case, the Wallace lot does not abut the road or right of way as defined by the Code because it is blocked by a small strip of land owned by the Applicant herein. That strip of land has not been conveyed by the Applicant to the County nor has it been improved as a road suitable for vehicular traffic.

Secondly, the easement is insufficient in meeting the requirements of the Code since it was not acquired by prescription, reservation, dedication or condemnation. Nor has it been improved as a road bed sufficient for vehicular traffic. While common sense may dictate that a recorded easement may provide the necessary access to property it fails to meet the requirements of a right of way as defined by the Code and further fails to meet the requirement that a given property, in fact, abut the road for at least 25 feet.

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The rules of statutory construction mandate that when there is no ambiguity or obscurity in the language of the statute, there is no need to look elsewhere to ascertain the intent of the legislative body. Montgomery County v. Buckman, 333 Md. 516, 636 A.2d 448 (1994). In the absence of ambiguity, the courts “are not at liberty to disregard the natural import of words with a view towards making the statute express an intention which is different from its plain meaning”, Fikar v. Montgomery County, 333 Md. 430, 434-35, 635 A.2d 977 (1984), quoting Potter v. Bethesda Fire Department, 309 Md. 347, 353, 524 A.2d 61 (1987). Applying these principles to the statute at hand leaves little doubt that a right of way may not be acquired by easement. If the legislative body had intended that easements could satisfy the requirements for acquisition of right of way and/or a road it would have included this within the statute, which it has chosen not to do.

At the present time, and at the time of the issuance of the building permit for the Wallace lot, this parcel was, in fact, landlocked and the permit should not have issued until the requirements of the Zoning Code had been satisfied. That is not to say that this parcel cannot be brought into compliance at some time in the future but rather, that the issuance of the permit was, at best, premature.

For the reasons stated herein the Hearing Examiner recommends that the decision of the Zoning Administrator be reversed and the building permit be rescinded.

Date APRIL 30, 1999

William F. Casey
Zoning Hearing Examiner